MJS Garage Management Corp., d/b/a Promenade Garage Corp. *and* Garage Employees Union, Local 272 International Brotherhood of Teamsters, AFL–CIO and Local 917, International Brotherhood of Teamsters, AFL–CIO, Party in Interest. Case 2–CA–25421

June 30, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND BROWNING

On October 18, 1993, Administrative Law Judge Howard Edelman issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed limited exceptions and a supporting brief and a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified and set forth in full below.

AMENDED REMEDY

Having found that the Respondent engaged in certain unfair labor practices in violation of Section 8(a)(1) of the Act, we shall order it to cease and desist and to take certain affirmative action to effectuate the policies of the Act.

Having found that the Respondent has violated Section 8(a)(3) and (1) by suspending and discharging employee Emmanuel Philome Philippe, we shall order the Respondent to make Philippe whole for any loss of earnings and other benefits suffered as a result of the discrimination against him.[3] Backpay shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful suspension, transfer, and discharge, and to notify the discriminatee in writing that this has been done and that these actions will not be used against him in any way. *Sterling Sugars*, 261 NLRB 472 (1982).

It having been found that the Respondent, in violation of Section 8(a)(2) and (3) of the Act has rendered unlawful aid and assistance to Local 917, by recognition of that Union as exclusive collective-bargaining agent, and by remitting of union dues deducted from employees' pay to that Union, the Respondent will be required to withdraw such recognition, to cease and desist from such recognition, and to cease deducting and remitting dues to Local 917. The Respondent shall also be ordered to cease giving effect to the collective-bargaining agreement between Promenade Garage and Local 917. However, nothing shall authorize or require the withdrawal or elimination of any wage increase or other benefits or terms and conditions of employment that may have been established pursuant to the performance of that agreement. The Respondent shall reimburse all present and former employees, who may have been coerced into membership in Local 917 by virtue of the union-security clause contained in the collective-bargaining agreement with Local 917, for moneys paid by or withheld from them with interest computed in the manner provided in *New Horizons for the Retarded*, supra.[4]

Although the judge found that the Respondent violated Section 8(a)(5) by failing to apply and extend the Local 272 contract to its employees at the Promenade Garage, the judge failed to provide a make-whole remedy for unit employees. To remedy the 8(a)(5) violation, the Respondent shall be ordered, inter alia, to recognize and bargain with Local 272, on request, as the exclusive representative of all Promenade Garage employees in the appropriate unit; on request, to apply and extend Local 272's 1989–1992 collective-bargaining agreement to the unit employees at Promenade Garage with retroactive effect from and after August 20, 1991, the date that Local 272 demanded recognition; and to make unit employees whole for any loss of

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We agree with the Respondent that Local 272's August 20, 1991 letter demanding recognition did not refer to the after-acquired clause in its contract. We do not agree, however, that a union which is party to a collective-bargaining agreement containing an after-acquired facilities clause must, in order to secure its right to recognition, specifically reference that clause in making a bargaining demand on an employer that is party to the agreement. So long as the union presents evidence of majority support in the facility in question at the time of the demand, it is entitled to recognition. *Alpha Beta Co*., 294 NLRB 228, 229 (1989). Hence, we agree with the judge that a bargaining order is warranted on this basis as well as on the rationale of *NLRB v. Gissel Packing Co*., 395 U.S. 575 (1969).

[2] In affirming the judge's conclusion that the Respondent interrogated employees in violation of Sec. 8(a)(1), Member Browning finds it unnecessary to rely on the judge's citation to *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985).

[3] The backpay period shall be from November 8, 1991, the date of Philippe's discharge, through May 12, 1993, when Philippe declined the Respondent's valid offer of reinstatement. Philippe shall also receive backpay for the 3-day suspension. We note that in the remedy section of his decision, the judge mistakenly stated that Philippe was discharged on May 8, 1991.

[4] See *Human Development Assn*., 293 NLRB 1228 (1989), enfd. 937 F.2d 657 (D.C. Cir. 1991), cert. denied 112 S.Ct. 1512 (1992).

earnings and other benefits resulting from the Respondent's failure to apply the terms and conditions of such collective-bargaining agreement to them, with interest.[5]

We shall order the Respondent to make whole its unit employees by making all delinquent fringe benefit contributions, including any additional amounts due the Local 272 benefit funds in accordance with *Merryweather Optical Co*., 240 NLRB 1213 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra. In addition, if the Respondent has failed to deduct union dues for employees who had executed dues-checkoff authorizations for Local 272 and to remit them to that Union, we shall order the Respondent to deduct and remit union dues as required by the agreement and to reimburse Local 272 for its failure to do so, with interest as prescribed in *New Horizons for the Retarded*, supra.

Because the Respondent's misconduct is so widespread as to demonstrate a general disregard for employee rights, we shall also amend the judge's recommended Order to include a broad cease-and-desist provision.[6]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set out in full below and orders that the Respondent, MJS Garage Management Corp., d/b/a Promenade Garage Corp., New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees about their union support.

(b) Threatening employees with discharge because they support a union.

(c) Threatening employees that it would be futile for them to support a union.

(d) Soliciting and coercing employees to sign dues checkoff for any particular union, including Local 917, International Brotherhood of Teamsters, AFL–CIO.

(e) Soliciting and coercing employees to sign documents which revoke their membership cards to any particular union, including Garage Employees Union, Local 272 International Brotherhood of Teamsters, AFL–CIO.

(f) Suspending, transferring, or discharging employees because they exercise Section 7 rights.

(g) Recognizing and bargaining with Local 917 as the exclusive bargaining agent of its employees since Local 917 did not represent an uncoerced majority of the Respondent's employees.

(h) Enforcing and maintaining the Local 917 collective-bargaining agreement containing a union-security clause and checkoff provision clause since Local 917 did not represent an uncoerced majority of the Respondent's employees.

(i) Refusing to recognize and bargain with Local 272 as the exclusive bargaining representative of its employees employed at the Promenade Garage in the unit found appropriate as set forth below:

> All full-time and regular part-time working managers, washers, floormen, transporters, attendants, cashiers employed by Respondent at its facility located at 530 East 75th St., New York, New York, excluding office clericals, professional employees, guards, and supervisors as defined by the Act.

(j) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Emmanuel Philome Philippe whole for any loss of earnings and other benefits suffered as a result of his unlawful suspension and discharge, in the manner set forth in the amended remedy section of this decision.

(b) Remove from its files any reference to the unlawful suspension, transfer, and discharge of Emmanuel Philome Philippe, and notify him in writing that this has been done and the the suspension, transfer, and discharge will not be used against him in any way.

(c) Withdraw recognition from Local 917 which does not represent an uncoerced majority of unit employees.

(d) Reimburse all present and former unit employees for moneys paid by or withheld from them pursuant to the collective-bargaining agreement for initiation fees, dues, or other obligations of membership in Local 917, with interest computed in the manner provided in the amended remedy section of this decision.

(e) Recognize and, on request, bargain with Garage Employees Union, Local 272 International Brotherhood of Teamsters, AFL–CIO as the exclusive bargaining representative of all employees employed at the Respondent's Promenade Garage in the unit described above.

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[5] The Respondent shall pay backpay as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

[6] See *NLRB v. Windsor Castle Health Care*, 13 F.3d 619 (2d Cir. 1994), citing *Hickmott Foods*, 242 NLRB 1357 (1979).

(f) On request, apply and extend with retroactive effect from August 20, 1991, the Local 272 contract to its employees employed at the Promenade Garage.

(g) Make whole unit employees at the Promenade Garage for any loss of earnings and other benefits they may have suffered by reason of the unfair labor practices engaged in by the Respondent in the manner set forth in the amended remedy section of this decision.

(h) Make any delinquent benefit fund contributions and union dues payments to Local 272 as required by the amended remedy section of this decision.

(i) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to determine the amounts of money due under the terms of this Order.

(j) Post at its place of business in New York, New York, copies of the attached notice marked ''Appendix.''[7] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(k) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate employees about their union support.

WE WILL NOT threaten employees with discharge because they support a union.

WE WILL NOT threaten employees that it would be futile for them to support a union.

WE WILL NOT solicit and coerce employees to sign dues checkoff for any particular union, including Local 917, International Brotherhood of Teamsters, AFL–CIO.

WE WILL NOT solicit and coerce employees to sign documents which revoke their membership cards for any particular union, including Garage Employees Union, Local 272 International Brotherhood of Teamsters, AFL–CIO.

WE WILL NOT suspend, transfer, or discharge employees because they exercise rights guaranteed by Section 7 of the Act.

WE WILL NOT recognize and bargain with Local 917 as the exclusive bargaining agent of our employees since Local 917 did not represent an uncoerced majority of employees.

WE WILL NOT enforce and maintain the Local 917 collective-bargaining agreement containing a union-security clause and checkoff provision clause since Local 917 did not represent an uncoerced majority of employees.

WE WILL NOT refuse to recognize and bargain with Local 272 as the exclusive bargaining representative of our employees employed at the Promenade Garage in the unit found appropriate.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make Emmanuel Philome Philippe whole for any loss of earnings and other benefits resulting from his unlawful suspension and discharge less any net interim earnings, plus interest.

WE WILL remove from our files any reference to the unlawful suspension, transfer, and discharge of Emmanuel Philome Philippe and notify Philippe, in writing, that this has been done and that the suspension, transfer, and discharge will not be used against him in any way.

WE WILL withdraw recognition from Local 917 which does not represent an uncoerced majority of unit employees.

WE WILL reimburse all present and former unit employees for moneys paid by or withheld from them pursuant to the collective-bargaining agreement for initiation fees, dues, or other obligations of membership in Local 917, with interest.

WE WILL recognize and, on request, bargain with Garage Employees Union, Local 272 International Brotherhood of Teamsters, AFL–CIO as the exclusive bargaining representative of all employees employed at the Promenade Garage in the unit described below:

> All full-time and regular part-time working managers, washers, floormen, transporters, attendants, cashiers employed by us at our facility located at 530 East 75th St., New York, New York, excluding office clericals, professional employees, guards, and supervisors as defined by the Act.

WE WILL, on request, apply and extend with retroactive effect from August 20, 1991, to our employees

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

employed at the Promenade Garage the Local 272 collective-bargaining agreement.

WE WILL make our employees at the Promenade Garage whole for any loss of earnings and other benefits resulting from our unfair labor practices, plus interest.

WE WILL make any delinquent fund contributions and union dues payments which may be required under our contract with Local 272.

MJS GARAGE MANAGEMENT CORP., D/B/A PROMENADE GARAGE CORP.

Ruth Weinreb, Esq., for the General Counsel.
John Canoni, Esq. (Twonley & Updike), for the Respondent.
Daniel Campbell, Esq., for Local 917.
Bruce Cooper, Esq. (Dublier, Haydon, Straci & Victor), for Local 272.

DECISION

STATEMENT OF THE CASE

HOWARD EDELMAN, Administrative Law Judge. This case was tried before me on May 12 and 13.

On November 13, 1991, Garage Employees Union, Local 272 International Brotherhood of Teamsters, AFL–CIO (the Union or Local 272) filed charges against MJS Garage Management Corp., d/b/a Promenade Garage Corp. (Respondent) alleging violations of Section 8(a)(1), (3), and (5) of the Act. On March 25, 1992, Local 272 filed an amended charge alleging a violation of Section 8(a)(2) of the Act. On July 21, 1992, a complaint issued alleging that Respondent violated Section 8(a)(1), (2), (3), and (5) of the Act. The complaint was amended on May 12, 1993, during the hearing to allege additional violations of Section 8(a)(1), (2), and (3) of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and briefs filed by counsel for the General Counsel, counsel for Respondent, and counsel for Local 917, I make the following

FINDINGS OF FACT

MJS Management Corp. is a New York corporation with an office and place of business in New York City. MJS Management leases and operates parking garages in New York City including Promenade Garage Corp., located at East 75th St., Manhattan, New York. Respondent admits that MJS Management Corp. and Promenade Garage Corp. are a single employer within the meaning of the Act in view of common ownership, management, and common administration of labor policy. Annually, MJS Management Corp., and its various leasing corporations, including Promenade Garage Corp., during the course and conduct of its business operations derive gross revenues in excess of $500,000. Annually, Respondent also purchases and receives at its facilities goods and materials in excess of $5000. directly from points outside the State of New York. Respondent admits and I conclude that it is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent's Promenade Garage contains approximately 23 parking spaces. Most of its customers are regular monthly paid customers. Respondent employs approximately five parking attendants at the Promenade Garage. These attendants park and deliver the automobiles. The manager of the Promenade Garage oversees the operation of the garage. Since the garage is open 24 hours a day, the parking attendants work one of three shifts. Mondays through Fridays, the parking attendants work either an 8 a.m. to 4 p.m. shift, a 4 p.m. to midnight shift, or a midnight to 8 a.m. shift. On weekends, the parking attendants work either an 8 a.m. to 8 p.m. shift or an 8 p.m. to 8 a.m. shift. The Promenade parking attendants and manager do not work with any of Respondent's other employees employed in Respondent's other garages.

Respondent, at all times material has been, and is presently an employer-member of Metropolitan Garage Owners Association (MGOA), an employer which represents various employers, including Respondent. MGOA and Local 272 were parties to a collective-bargaining agreement effective from February 6, 1989, until February 5, 1992. This agreement covered a bargaining unit of:

> All full-time and regular part-time working managers or working foremen, washers, floormen, transporters, cashiers and other persons now or hereafter performing one or more of the said included job classifications employed by the employer-members of the Association.

This agreement also contained an ''after acquired store'' clause which set forth:

> In the event the Employer takes over the operation of a garage or parking establishment within the geographic area . . . that is not covered by a union contract, then the provisions of the contract shall immediately take full force and effect.

In addition, Respondent has an individual collective-bargaining agreement with Local 917, International Brotherhood of Teamsters, AFL–CIO (Local 917), which covers seven of Respondent's facilities, excluding Respondent's Promenade facility. The present agreement is effective from October 1, 1992, through September 30, 1995. There was a prior agreement effective from October 1, 1987, until September 30, 1992. The Local 272 agreement contained a similar ''after acquired store'' clause.

A major point of contention in this case is which, if any, local represents Respondent's Promenade employees.

Emmanuel Philome Philippe (Philippe). Philippe became employed by Respondent at the Promenade Garage in 1988 as a parking attendant. He worked the 4 p.m. to midnight shift. Gary Schneeweiss, the son of Respondent's president, Michael Schneeweiss, hired Philippe. At the time Philippe was hired, no one advised him that the Promenade employees were represented by a union. Nor did any one give him a union dues-checkoff card to fill out and sign. On employment with Promenade, all employees including Philippe were unaware of any collective-bargaining agreement covering the terms of employment at the Promenade Garage.[1]

[1] Manager Herve Gratia, an admitted employee within the meaning of Sec. 2(3) of the Act was a member of Local 917. However, the credible evidence set forth below establishes that he was unaware of any collective-bargaining agreement with Local 917 which covered the Promenade employees.

After a few months of employment, Philippe left Promenade Garage to move to Boston, Massachusetts. Then in August 1990, Philippe returned to Promenade looking for employment. Philippe spoke to Gratia, the Promenade manager, and to Gary Schneeweiss (Gary). During this conversation, Gary asked Gratia under what terms did Philippe leave Promenade in 1988. Gratia told Gary that Philippe was a good employee and left on good terms. Gary rehired Philippe. Again, Philippe worked the 4 p.m. to midnight shift during the weekdays and on the weekend, he worked 8 a.m. to 8 p.m.

On his return to Promenade, no one advised Philippe that the Promenade employees were being represented by a union. Nor did any one give Philippe a dues-checkoff card. Indeed, there is no credible evidence to establish that any Promenade employee was aware that they were covered by any collective-bargaining agreement.

In early 1991, Local 272 Business Agent Frank Gordon (Gordon) discovered the Promenade Garage on East 75th Street. As a Local 272 business agent, Gordon serviced the Upper East Side of Manhattan parking garages and came across the Promenade Garage while performing his business agent responsibilities. Gordon met Gratia at the garage and asked him if the garage employees were being represented by Local 272. Gordon also asked Gratia if he had ever seen a Local 272 business agent. Gratia said, ''no,'' to both of Gordon's questions.

Thereafter, in late April 1991, Gordon returned to the Promenade Garage and spoke to Gratia and Philippe. Gordon asked Gratia and Philippe if the employees were being represented by a union. Gratia said that the only thing he knew of a union was his Local 917 card. Gratia then showed Gordon a Teamsters union card which stated Local 917 on it. Gratia also told Gordon that he had never seen a Local 917 business agent and that his boss had given him the card.

Gratia further told Gordon that he was not aware of any collective-bargaining agreement covering the terms and conditions of employment of the Promenade employees. Gratia told Gordon that Local 917 has not done anything for him, because when he had to see a doctor, Local 917 did not reimburse him for the visit.

Gordon also asked Gratia and Philippe what type of benefits they received from Respondent. Gratia and Philippe advised Gordon that they did not receive sick leave, overtime, or medical coverage.

Gordon then discussed Local 272 representation and the advantages of being represented by Local 272. Gordon also gave Gratia and Philippe Local 272 union cards. Gordon told Gratia and Philippe that if they wanted to be represented by Local 272, then they should read and sign the cards. Gordon also told Gratia and Philippe that once they sign the cards, then Local 272 would be able to write a letter of recognition to Respondent in order to see if the Respondent would recognize Local 272 as the employees' collective-bargaining representative. Gordon further told Gratia and Philippe that if Respondent refused to recognize Local 272, then Local 272 could file a petition with the Board. Gordon, however, advised Gratia and Philippe that in order to file a petition with the Board, a certain percentage of employees had to sign cards.

Gratia and Philippe, in Gordon's presence, read and signed cards on April 30, 1991. They returned the signed cards to Gordon that day. Gordon left additional cards with Gratia and Philippe so that they could give them out to the other employees.

A couple of days later, Philippe spoke to fellow employees Mortimor Joseph (Joseph), Francois Philippe, and Nester Martinez (Martinez) about Local 272. Philippe told Joseph, Francois Philippe, and Martinez that if they wanted to be represented by Local 272, then they should read and sign the Local 272 cards. Francois Philippe read and signed a card in Philippe's presence on May 8, 1991.

Philippe read the card to Martinez since he forgot his glasses that day. Philippe also filled in the blank spaces for Martinez. Martinez signed the card in Philippe's presence in early May 1991. Francois Philippe and Martinez returned signed cards to Philippe and in early May 1991, Philippe returned Francois Philippe's and Martinez' cards to Gordon.

When Gordon met with Philippe and Gratia in late April 1991, Philippe and Gratia advised him that Michael Schneeweiss (Michael) was the owner of the garage. On learning who the owner was, Gordon spoke to the then Local 272 Recording Secretary Daniel Sullivan (Sullivan). Gordon advised Sullivan that Michael was the owner of the Promenade Garage and that Michael was also an employer-member of the MGOA. Gordon and Sullivan then concluded that pursuant to ''after acquired store'' clause in their MGOA agreement, of which Respondent was a member, the Promenade facility would be covered on a showing of majority representation.

Gordon testified that a letter was then prepared advising Respondent that Local 272 represented a majority of his employees at the Promenade facility and that pursuant to the ''after acquired store'' clause in the MGOA agreement the Promenade employees were covered by such agreement. According to Gordon, demand letters are always sent out by registered mail. Gordon did not see the letter mailed. Local 272 submitted no post office receipt of delivery. Respondent denied receipt of such letter.

Notwithstanding, General Counsel's contention that a presumption of receipt is applicable. I conclude such presumption is not applicable in this case in view of Respondent's denial of receipt, Local 272's failure to produce a receipt of delivery, and in view of Respondent's actions and conduct following his receipt of a subsequent similar demand letter dated August 20, 1991, admittedly received by Respondent.

Sometime on or about the beginning of August 1991, during a telephone conversation between Gordon and Gary, Gordon must have brought up the subject that he had signed up Respondent's Promenade employees, because Gary accused Gordon of coercing Respondent's employees into signing Local 272 cards. Gary also stated that he could choose any union he wants to represent his employees. Gordon told Gary that he intended to continue with his organizational campaign.

After being accused of coercing Respondent's employees, Gordon went back to the Promenade Garage in mid-August 1991 to make sure the employees wanted to be represented by Local 272. Gordon told the employees that he was having problems with Respondent and that Gary had accused him of forcing the employees to sign cards. Gordon also told the employees that if they really wanted to be represented by Local 272, then they should read and sign another Local 272 card.

Philippe also spoke to some employees about signing another Local 272 card. Philippe spoke to Martinez, Francois Philippe, and to Joseph. Philippe told these employees that if they still wanted to be represented by Local 272, then they should read and sign another Local 272 card.

On August 27, 1991, Philippe and Francois Philippe read and signed another Local 272 card. Francois Philippe signed his card in Philippe's presence. On August 28, 1991, Gratia and Martinez read and signed another Local 272 card. Gratia signed his card in Gordon's presence and Martinez signed his Local 272 card in Philippe's presence. Thereafter, on August 30, l991, Joseph, in Gordon's presence, read and signed another Local 272 card. Gratia and Joseph gave their cards to Gordon when they signed them in his presence. Philippe gave Gordon the other signed cards in early September l991.

On August 20, 1991, Sullivan wrote another letter to Respondent requesting that Respondent recognize Local 272 as the exclusive representative of the Promenade employees. In this letter, Sullivan also advised Respondent that Local 272 represented a majority of the employees. On September 10, 1991, Respondent, through its attorney, rejected Local 272's demand for recognition.

On September 9, 1991, Michael held a meeting with the employees of Promenade and Local 917 Representative Langston McKay (McKay). However, just prior to this meeting, Michael initiated a conversation with Philippe and Gratia at the Promenade Garage. Michael asked Philippe and Gratia if they signed a Local 272 card. Philippe and Gratia said, ''no.'' Then Michael told Philippe and Gratia that he swore on his mother's grave that if they told him the truth, no one would be fired. Philippe and Gratia told Michael that they signed Local 272 cards. Michael then called Philippe a ''troublemaker'' and a ''liar'' because he first said that he hadn't signed a Local 272 card. Philippe told Michael that he denied signing a Local 272 card because he was afraid of losing his job. Michael then said, ''time will tell.''[2]

During the September 9 meeting with McKay, Michael told the employees, Gratia, Joseph, Francois Philippe, and Philippe, that Local 917 would give them the same benefits that they would have received from Local 272. Michael also gave out Local 917 union dues-checkoff authorization cards to the employees for them to sign. Francois Philippe, Gratia, and Joseph signed the Local 917 union dues-checkoff cards.

In addition, Michael handed out typed letters to the employees and told them to sign them.[3] These letters stated that the employees wanted to withdraw their authorization cards from Local 272 because they did not want Local 272 as their bargaining representative. Only Joseph, Gratia, and Martinez signed the letter. These letters were eventually sent to Gordon. Prior to this meeting, Philippe had never seen a Local 917 representative. Michael never denied handing out such letters.

Immediately after this meeting, Michael approached Philippe and asked him why he would not sign the letter. Michael also told Philippe that Local 917 is like his own union, and that he could give the employees the same benefits given by Local 272 because he is wise. Michael also told Philippe that he always beats the system. Michael did not rebut this testimony.

The day after this meeting with McKay and Michael, Philippe received a copy of the Local 917 1989–1992 collective-bargaining agreement. Prior to this day, Philippe had never seen the Local 917 contract.

A week or so later, Philippe spoke to Michael on the telephone. Michael asked Philippe if he was satisfied with the Local 917 representation. Philippe told Michael that he was not satisfied with Local 917 because Local 917 provided less medical coverage than Local 272. Philippe told Michael that under the Local 917 contract, he only received approximately 12 percent of the cost of a doctor's visit. However, under the Local 272 contract, he would have received 80 percent. Michael told Philippe that he sounded ''sour'' and hung up the phone. Michael never contradicted this testimony.

Within days following the above telephone conversation, Respondent suspended Philippe because he clocked out of work early. Philippe was scheduled to work a 12-hour day and after feeling sick decided to clock out early. Martinez was working with Philippe that day and remained at the garage. Gratia told Philippe that Michael was suspending him for 1 week because he had clocked out early that day.

On November 4, 1991, another meeting was held with Local 917 Representative McKay and Respondent's employees. Philippe did not attend this meeting because he did not have a babysitter for his child. Thereafter, on November 5, 1991, Philippe spoke to Gratia. Gratia told Philippe that Michael wanted to fire him, but that Gratia told him that Philippe had not done anything wrong. Gratia also told Philippe that Michael wanted to talk to Philippe because he was going to transfer Philippe to another garage.

Later that day, Philippe met with Michael to discuss his transfer. Michael told Philippe that he should resign. Philippe told Michael that he could not resign because he had too many responsibilities and he liked his job. Michael then told Philippe that he was a leader and that he was always late. Philippe asked Michael to look at his timecards because he was not late. Michael told Philippe that the timeclock did not work properly. Philippe then stated that if the timeclock was broken, then everyone would be late. Michael then told Philippe that he was going to be transferred to a new garage because he (Michael) did not like his work ''attitude.'' Philippe called Michael's office and was told by the secretary to report to the Waterview Garage on East End Avenue. Respondent also reduced Philippe's hours from 40 hours a week to 38 hours a week.

At the Waterview Garage, Philippe did not receive any instructions on how to record transactions. Caesar Silver, the manager, only told Philippe how to park the cars. Philippe, however, recorded the transactions on paper and put the paper and the money in an envelope. Then at the end of his shift, Philippe placed the envelope in a drawer. Philippe credibly testified that he did not rip up any tickets, stubs, or transaction sheets.

[2] Michael Schneeweiss testified during the trial. He did not deny this conversation.

[3] Gratia testified that McKay gave the letter to the employees at the meeting and made them sign it. However, McKay testified he was in the hospital when the letters were distributed. McKay testified that he had these letters prepared because the employees expressed an interest in withdrawing their support from Local 272. Philippe testified that he never told McKay that he wanted to withdraw his support from Local 272. In addition, Gratia and Joseph did not testify that they told McKay that they wanted to withdraw their support from Local 272.

Philippe worked at the Waterview Garage for 1 day. When he returned to work on the second day, November 8, 1991, Michael, by telephone, advised him that he was being discharged. Philippe credibly testified that he asked Michael why he was being discharged and that Michael would not give him any reasons for his discharge. Philippe then asked for a termination letter. Michael told Philippe to pick up a termination letter from the manager of another Respondent garage. Michael did not deliver the termination letter to Philippe.

Philippe credibly testified that Michael did not tell him that he failed to perform his work properly at the Waterview Garage, or that his overall job performance was poor.

During his employment with Respondent, Philippe never received any written warnings about lateness. Prior to being discharge, Respondent never complained about Philippe's work performance. In addition, Respondent never told Philippe that customers were complaining about his work performance.[4]

[4] The findings of facts were based primarily on the credible testimony of Philippe, Gordon, and Gratia only when he testified against Respondent's interest.

Additionally, significant testimony was not denied or rebutted by Michael Schneeweiss. I conclude that Gratia is a totally incredible witness. Gratia, throughout his entire testimony was visibly hostile toward Philippe. You could see it in his fact (sic). Several times during his testimony he actually looked at Philippe in a clearly angry manner. In addition his voice displayed obvious anger, especially when he described Philippe's alleged poor job performance. Moreover, much of Gratia's testimony is virtually unbelievable. He testified initially that Philippe on a daily basis, throughout both periods of his employ, parked cars on the curb illegally, where they were frequently ticketed by the New York City police, that he was always late, and always left early. When pressed on how he could have recommended rehiring Philippe, he then contradicted his prior testimony and testified that Philippe's employment during his initial period was satisfactory. When later confronted with this inconsistent testimony, he testified that he told Respondent that Philippe was a good employee, even though he was not, so that Philippe could get the job, because at that time they were friends. Gratia although admittedly not a supervisor within the meaning of the Act, was the manager of the Promenade facility and his duties clearly included reporting such conduct to Respondent if it occurred. Yet he did not. Additionally, Gratia who was admittedly not a supervisor within the meaning of the Act, testified that he made the decision to suspend Philippe. Such testimony was contradicted by Michael who testified that it was he, Michael, who made the decision to suspend Philippe. I find Gratia's entire testimony incredible except where he testified as to conduct against Respondent's interest.

Mortimor Joseph, a Respondent witness, testified that he made many complaints to Gratia about Philippe's poor work. He testified as to one incident which took place about 3 months before Philippe's suspension wherein he and Philippe had a confrontation and Philippe chased him around the garage lot with a baseball bat. He told Gratia and Gary Schneeweiss about such incident, yet no action was taken against Philippe by Respondent. I find such testimony simply unbelievable. Moreover, I was unimpressed with his demeanor. His recollection of facts was generally vague and I conclude that he is not a credible witness.

Michael Schneeweiss is also not a credible witness. A review of his entire testimony establishes that his recollection of the facts was generally poor. Moreover, he failed to rebut or contradict other testimony adverse to his interest as indicated throughout this decision.

Philippe, on the other hand, was a generally credible witness. He displayed a good recollection of the facts. He was responsive to questions put to him on both direct and cross-examination. I was generally impressed with his demeanor. Moreover, much of his testimony was neither rebutted nor contradicted by Respondent.

[5] Dues were deducted from Gratia's pay since at least November 1990.

Analysis and Conclusions

At trial, and in its brief, Respondent contended that the Promenade employees were part of a multilocation unit covered by the Local 917 collective-bargaining agreement and therefore could not be deemed a separate unit for the purposes of collective bargaining. Yet, in its answer, Respondent admitted the single plant unit alleged. General Counsel contends that the Promenade employees were not part of a multilocation unit and constitute a unit appropriate for collective bargaining.

It is basic Board law that a single plant unit is presumptively appropriate in the absence of a controlling history of collective bargaining. *United Artists Communications*, 280 NLRB 1056 (1986), citing *Penn Color*, 249 NLRB 1117 (1980). In this case, Respondent failed to show that Promenade was part of a multilocation unit. As set forth above, Respondent in its answer admitted that the Promenade employees, alone, constituted a unit appropriate for the purposes of collective bargaining.

In addition, the evidence shows that Respondent's Promenade employees were not covered by the Local 917 contract. The employees clearly did not receive any benefits under the Local 917 contract. Philippe credibly testified that prior to September 1991, he had no knowledge of any collective-bargaining agreement covering the terms and conditions of employment at the Promenade Garage. Philippe credibly testified that the Promenade employees did not receive sick leave, overtime, or medical coverage. Nor were dues being deducted from the employees' paychecks.[5] Moreover, Respondent failed to contribute to the Local 17 pension and health funds.

Moreover, the evidence shows that the Promenade employees and Respondent's other garage employees received different terms and conditions of employment. John Burke, a former president for Local 917, testified that in September 1991, Michael wanted to give only the Promenade employees a wage increase. Thus, to this significant extent, Respondent clearly treated the Promenade employees differently and separately from the other employees employed in other Respondent garages.

Further the evidence establishes no employee interchange, the absence of any shared bargaining history, and the different terms and conditions of employment.

On the basis of the above, it is clear that the Promenade employees had no knowledge of the Local 917 contract, they did not receive the contract benefits, nor did Respondent contribute to the required Local 917 funds. Rather Respondent in granting a wage increase to the Promenade employees without granting a similar wage increase to the other units under the Local 917 contract treated the Promenade employees as a separate facility. There is also no interchange or shared bargaining history. Accordingly, I conclude the single plant unit alleged by General Counsel is a single plant unit, and an appropriate unit for bargaining. Such unit consists of:

> All full-time and regular part-time Working Managers, Washers, Floormen, Transporters, Attendants, Cashiers,

employed by Respondent at its facility located at 530 East 75th Street, New York, N.Y., excluding office clericals professional employees, guards and supervisors as defined by the Act.

These employees clearly worked only at the Promenade garage and shared a strong community of interest.

The evidence establishes that in early September 1991, just before the Local 917 meeting began, Michael initiated a conversation with Philippe, Gratia was also present. During this conversation, Michael asked Philippe and Gratia if they signed authorization cards with Local 272. Initially Philippe and Gratia gave a negative response because they were afraid of losing their jobs. When Michael assured them that they wouldn't lose their jobs, Philippe and Gratia told Michael that they did sign Local 272 cards.

General Counsel contends that Michael's question constitutes an interrogation in violation of Section 8(a)(1) of the Act. I conclude such contention has merit. It is well settled that in the totality of the circumstances of a case, the questioning of an unknown union adherent about his union sentiment constitutes an unlawful interrogation. *Action Auto Stores*, 298 NLRB 875, 895 (1990); *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985).

In the instant case, Philippe was an unknown Local 272 adherent before Michael questioned him about Local 272. Michael may have known that some of the ''men'' signed Local 272 cards, but there is no evidence that he knew about Philippe's Local 272 activities. In addition, Michael's question concerning Philippe's union sentiment was not isolated, casual, or conducted in a context free of union hostility or other serious unfair labor practices. Rather, it was asked at the same time Michael threatened Philippe with discharge because of his support for Local 272.

Thus, from the totality of the circumstances, the evidence establishes that Michael's question was intended to determine the extent of Local 272 support as well as to restrain, coerce, and interfere with employees. Accordingly, I conclude that Respondent interrogated Philippe in violation of Section 8(a)(1) of the Act. *Thore, Inc*., 296 NLRB 859 (1989), *Gupta Permold Corp*., 289 NLRB 1234 (1988).

During the same conversation discussed above, Michael called Philippe a ''troublemaker'' and a ''liar.'' Philippe then told Michael that he initially hid the truth about signing a Local 272 card because he was afraid of being fired. Michael then told Philippe, ''time will tell.''

Michael's complaint that Philippe was a ''troublemaker'' is evidence that Michael had strong animus toward Philippe because of his support for Local 272. *Knoxville Distribution Co*., 298 NLRB 688 (1990). Therefore, in light of this evidence of animus, Michael's statement, ''time will tell,'' was clearly coercive and constitutes an implied threat to discharge Philippe in violation of Section 8(a)(1) of the Act. *Honeycomb Plastics Corp*., 288 NLRB 413 (1988), citing *Midland-Ross Corp*., 239 NLRB 323 (1978), enfd. 617 F.2d 977 (3d Cir. 1980).

The evidence also establishes on September 9, 1991, after the meeting with Local 917 Representative McKay, Michael asked Philippe why he didn't sign the letter concerning the revocation of his Local 272 card. Michael told Philippe that Local 917 was like his own union, that he was wise and that he always beats the system.

General Counsel contends that Michael's statement was intended to convey to Philippe that his efforts to obtain union representation from Local 272 were futile because Respondent dealt only with his own union, Local 917. In view of Respondent's threat of discharge and interrogation, as discussed above, Michael's statement that Local 917 was like his own union and that he always beats the system is a statement clearly designed to chill Philippe's right to exercise his Section 7 rights. Accordingly, I conclude such statement was in violation of Section 8(a)(1) of the Act. *Money Radio*, 297 NLRB 698, 702 (1990).

In determining whether Respondent violated Section 8(a)(1) and (3) of the Act by suspending, transferring, and discharging Philippe, General Counsel has the burden of proving that Philippe's union activities were a motivating factor in his suspension, transfer, and discharge. Once such factors are established, the burden shifts to Respondent to establish the same actions would have taken place in the absence of such union activity.

Wright Line, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *NLRB v. Transportation Management Corp*., 462 U.S. 393, 398 (1983).

The evidence clearly establishes that Philippe was an active Local 272 adherent. In April 1991 he spoke to Local 272 Business Agent Gordon about Local 272 and signed a Local 272 authorization card. Thereafter, Philippe spoke to his fellow employees about Local 272 and solicited their support. As a result of Philippe's organizing efforts the other employees signed Local 272 cards.

Philippe's organizing efforts continued in August 1991 when Gordon requested that the employees sign another Local 272 authorization card. Philippe signed the card and solicited Local 272 support from the other parking attendants employed at Promenade Garage. By the end of August 1991, Philippe obtained signed cards from Francois Philippe and Nestor Martinez.

The evidence clearly establishes that Respondent had direct knowledge of Philippe's support for and activities on behalf of Local 272 at the time it decided to suspend, transfer, and discharge him. Pursuant to the unlawful interrogation, described above, Philippe told Michael that he signed a Local 272 card. In addition, Philippe's refusal to sign the September 1991 letter that revoked his Local 272 authorization card is further evidence that Respondent had knowledge of his support for Local 272. After the meeting, Michael asked him why he didn't sign the letter. Based on the above evidence, I find that Respondent had certain knowledge of Philippe's support of Local 272 before it decided to suspend Philippe in mid-September 1991, transfer him in early November 1991, and discharge Philippe on November 8, 1991.

The evidence, in this case clearly established a prima facie case that Respondents' motivation for suspending, transferring, and discharging Philippe was his support for and activities on behalf of Local 272. There is no doubt that Respondent had strong animus toward Philippe because he supported Local 272. The evidence of unlawful interrogation and threat of discharge, described above, clearly establishes this. *Bay Metal Cabinets*, 302 NLRB 152 (1991); *Knoxville Distribution Co*., 298 NLRB 688 (1990).

Moreover, Michael testified that he transferred Philippe because he (Michael) didn't like Philippe's ''work attitude.''

The Board has long held that an employer's complaint about an employee's ''attitude'' was an euphemism for a prounion attitude. *Marion Steel Co*., 278 NLRB 897, 899 (1986); *Del Rey Tortilleria*, 272 NLRB 1106 fn. 21 (1984). Given the 8(a)(1) conduct, described above, I conclude that Respondent's use of the word ''attitude'' was an euphemism for a Local 272 adherent and further evidence that Respondent clearly disliked Philippe and disciplined Philippe because he supported and engaged in activities on behalf of Local 272.

The timing of Philippe's suspension, transfer, and discharge is also strong evidence in support of Respondent's discriminatory motivation. Thus, within days following the unlawful interrogation and threat of discharge, Respondent suddenly suspended Philippe. Such timing is suspicious and is evidence of a discriminatory motivation.

The evidence also established that after his suspension, Philippe had a conversation with Michael about Local 917. Wherein Michael asked him if he was satisfied with Local 917. Philippe told Michael that he was not satisfied with Local 917 because the medical benefits were not as good as Local 272's benefits. Michael then told Philippe that he sounded ''sour.'' Immediately after this conversation with Michael, Respondent transferred Philippe to the Westview Garage. After working at the Westview Garage for *1* day, Respondent discharged Philippe.

Thus, I conclude that in view of Respondent's knowledge of Philippe's union activity, its unlawful 8(a)(1) activity, which included a threat of discharge, and the suspicious timing of the suspension, transfer, and discharge, the General Counsel has established a strong prima facie case of discriminatory motivation. The burden now shifts to Respondent to establish the suspension, transfer, and discharge would have taken place in the absence of such union activity.

Respondent contends that he suspended Philippe in mid-September 1991 because he clocked out early because he felt ill. Philippe credibly testified without contradiction that several weeks after his suspension, fellow employee Nestor Martinez clocked out early under similar circumstances and received no discipline. Thus, I conclude that Respondent clearly seized on this incident to suspend Philippe because of his support for Local 272. The unrebutted evidence shows disparate treatment. *Pope Concrete Products*, 305 NLRB 989 (1991).

Respondent also contended that Philippe was suspended because he was always late, was uncooperative, and did not perform his job properly. Yet Gratia who I have concluded testified incredibly as to such conduct, never reported it to Respondent. Thus I find that Respondent failed to offer credible testimony to support such contention. Moreover, even if Gratia's testimony were credited, I would conclude such conduct was long condoned until Philippe engaged in union activity and Respondent acquired knowledge of such activity.

Respondent also contended that a reason for Philippe's suspension was the alleged baseball bat incident between Philippe and employee Joseph, wherein Joseph testified that Philippe threatened to hit him with a baseball bat and that he reported this incident to Gary and Gratia. In view of my credibility resolutions I conclude such incident never happened and was never reported to Respondent. However, even if these events took place as Respondent's witnesses testified, Philippe was suspended 3 months following the alleged incident. Such delay in discipline clearly rebuts Respondent's contention that it was the baseball bat incident that contributed to Philippe's suspension. If such action had taken place and had it been reported to Respondent, immediate discipline would be reasonably expected.

Thus, I conclude that Respondent has failed to meet its *Wright Line* burden and accordingly conclude that by suspending Philippe for 1 week, Respondent violated Section 8(a)(1) and (3) of the Act.

On November 5, 1991, Philippe was transferred from the Promenade facility to Respondent's Westview facility. Shortly before his transfer he had a conversation with Michael over the telephone where Michael asked Philippe about his feelings toward Local 917 and if he was satisfied with Local 917 when Philippe told him that he was not satisfied with Local 917 because the medical coverage was not as good as the Local 272 coverage, Michael told Philippe that he sounded ''sour.''

On or about November 5, Philippe had a face-to-face conversation with Michael, Michael initially asked Philippe to resign. When Philippe refused to resign, Michael then transferred him to the Westview Garage. During this conversation, Michael called Philippe a ''leader'' and accused him of always being late. Philippe denied that he was always late and insisted that Michael examine the timecards. Michael then said that the timeclock was broken. Philippe then told Michael that if the timeclock was broken, then everyone would be late.

At the trial, Michael testified that Philippe was transferred because Philippe was ''not working out at the garage,'' and because ''the other men didn't want to work with [him].'' Michael also testified that he transferred Philippe because he didn't like Philippe's ''work attitude.''

I conclude that Respondent's reasons for Philippe's transfer were pretextual. The transfer followed Respondent's unlawful activity described above, which included a threat to discharge and a discriminatory suspension. Further the transfer took place shortly after Michael accused Philippe of being ''sour'' about Local 917 representation, and immediately after Michael complained to Philippe about his ''work attitude.'' Such comments as turning ''sour'' or complaints about ''work attitude'' are common euphemisms for a union adherent. *Marion Steel*, supra; *Del Rey Tortilleria*, supra. Under these circumstances, I conclude Respondent's reasons for Philippe's transfer were pretextual and conclude that Respondent has failed to meet its *Wright Line* burden.

Accordingly, I conclude that by transferring Philippe, Respondent violated Section 8(a)(1) and (3) of the Act.

Respondent discharged Philippe on November 8, 1991, 1 day after his transfer. Philippe credibly testified that at the time he was discharged Respondent did not give a reason for the discharge. Rather, by telephone, Michael merely advised Philippe that he no longer worked for Respondent. When Philippe asked Michael why he was discharged, Michael just told him that the garage was his place and if Philippe didn't leave right away, he would call the police.

Pursuant to Philippe's request, Michael did prepare a dismissal letter. In this letter, Michael stated that Philippe was discharged because of the ''continuing problems with [Philippe's] work.'' Michael further stated that Philippe's work problems included lateness, and his inability to perform his job at the Westview Garage.

I conclude that the reasons advanced by Respondent in its dismissal letter are pretextual. Respondent's initial failure to inform Philippe of the reasons for his discharge at the time of his discharge is evidence that Respondent's reasons are suspect. *Troxel Co*., 305 NLRB 536 (1991).[6]

In addition, Respondent's failure to advise Philippe that he had a behavioral problem prior to his discharge is evidence that Respondent's reasons are post ad hoc rationalizations for its real and unlawful motives. *Bay Metal Cabinets*, supra, citing *Prototype Plastics*, 284 NLRB 711 (1987); *Selox, Inc*., 222 NLRB 497 (1976).

As set forth above, Philippe credibly testified that he did not have a lateness problem while employed with Respondent. This was not contradicted by any credible evidence. He never received a written warning for such alleged problem. In fact, Respondent never produced any written warnings or any timecards at trial which would establish such alleged lateness. Philippe also credibly testified that he was never advised that he was uncooperative or failed to perform his job properly.

Respondent's failure to produce evidence of some disciplinary action taken against Philippe prior to his protected activities adds credibility to Philippe's credible testimony. An employer would usually take some action against an employee, even a written warning or an internal memo, given the conduct alleged by Respondent to have been committed by Philippe. In addition, Respondent's failure to produce timecards shows that Philippe really didn't have a lateness problem. Thus, failure to produce such evidence shows that Respondent really didn't have a problem with Philippe and never discussed any work performance problem with him.

Accordingly, I conclude that Respondent has utterly failed to meet its *Wright Line* burden and further conclude by its suspension, transfer, and discharge, Respondent engaged in desperate acts in violation of Section 8(a)(1) and (3) of the Act.

An employer violates the Act by soliciting employees to revoke any union authorization cards they may have signed. *Aircraft Hydro-Forming, Inc*., 221 NLRB 581, 583 (1975).

The credible evidence established that Michael solicited Respondent's employees to sign letters which revoked their Local 272 authorization cards, which had been signed voluntarily and were valid cards.

During the early September 1991 meeting, called by Respondent, Michael handed out and told the employees to sign petitions which stated that the employees wanted to withdraw their Local 272 authorization cards. These petitions were already typed and addressed to Local 272. As set forth above Michael never denied that he handed the petitions out to the employees.[7]

McKay testified that the employees, at the early September 1991 meeting, expressed their dissatisfaction with Local 272 and an interest in withdrawing their Local 272 cards. McKay further testified that on the employees' request, he explained how they could withdraw their Local 272 cards, and agreed to have the Local 917 secretary type the revocation letter for the employees. However, Gratia and Joseph, who testified on behalf of Respondent never corroborated McKay's testimony. Accordingly, I do not credit McKay's testimony on this issue.

Accordingly, I conclude that Respondent unlawfully assisted Local 917 in violation of Section 8(a)(1) and (2) of the Act. *Rose Printing Co*., 289 NLRB 252, 270–271 (1988); *Cummins Component Plant*, 259 NLRB 456 (1981); *Aircraft Hydro-Forming, Inc*., supra.

It is undisputed that Respondent distributed Local 917 dues-checkoff cards to its employees at the September 9, 1991 meeting. Michael handed the Local 917 dues-checkoff cards to the employees and had them sign the cards. Respondent never denied this conduct. Respondent also engaged in this conduct at a time when it committed other unfair labor practices and at a time when Local 917 did not represent an uncoerced majority in an appropriate unit. Accordingly, I conclude that Respondent's conduct constitutes an unlawful solicitation in violation of Section 8(a)(1) and (2) of the Act. *Shenandoah Coal Co*., 305 NLRB 1071 (1992); *Jayar Metal Corp*., 297 NLRB 603, 608 (1990); *Capitol Transit*, 289 NLRB 777 (1988).

Although Respondent presented evidence to suggest that it entered into a collective-bargaining agreement with Local 917 in December 1990, the evidence clearly establishes that Local 917 did not represent an uncoerced majority of Respondent's at its facility in issue, employees at this time. As set forth and discussed above, I have concluded that a multiplant unit, including the Promenade Garage, is not an appropriate unit given the nature of Respondent's overall parking garage operation. I also concluded that a single plant unit was the appropriate unit at Respondent's Promenade Garage facility. In this unit, Respondent and Local 917 failed to produce any evidence that Local 917 represented a majority of the employees in December 1990, or at any other time thereafter. In this connection, Respondent failed to produce dues-checkoff cards from that period and Local 917 failed to produce union authorization cards.[8]

It is clear that all the employees, including Gratia were never advised nor aware that Local 917 represented the employees. Nor did Respondent give a Local 917 dues-checkoff card to any of its employees until after it became aware of Local 272's organizational activity. Further, none of the terms of the alleged contract were enforced until Respondent became aware of Local 272's organizational activity.

Thus, I conclude that Respondent violated Section 8(a)(1) and (2) of the Act by recognizing Local 917, when Local 917 did not represent a majority of Respondent's employees. *Jayar Metal Corp*., supra; *Gold Standard Enterprises*, 249 NLRB 356 (1980); *Bell Energy Management Corp*., 291 NLRB 168, 179 (1988).

Under current Board law, it is unlawful for an employer to suddenly enforce the terms of a contract after it had been dormant almost from its inception in order to thwart the efforts of the employees to seek representation from another union. *United Artists Communications*, 280, NLRB 1056, 1065 (1986); *Metropolitan Alloys Corp*., 233 NLRB 966

[6] Although Michael testified that he did advise Philippe of the reasons for his discharge, at the time he was discharged, I have concluded he is not a credible witness and accordingly his testimony as to this issue is not credited.

[7] Gratis testified that Local 917 Representative McKay handed out these letters. However, McKay denied this and testified that he was in the hospital when the above letters were handed out. This is an additional reason for concluding that Gratia was not a credible witness.

[8] It appears only Gratia was a Local 917 member at this time.

(1977), enfd. 624 F.2d 743 (6th Cir. 1980). As set forth above, in early September 1991, Respondent suddenly decided to enforce the Local 917 contract in order to discourage employees from engaging in protected activities and in order to thwart Local 272's organizing campaign.

The evidence clearly shows that Respondent by early September 1991 learned about Local 272's organizing campaign and of Local 272's majority status.

Additionally, I conclude that Respondent's rush to enforce a dormant Local 917 contract in September 1991 and its eagerness to make retroactive, Local 917's contractual payments were done in order to thwart Local 272's organizing efforts and to prevent its employees from engaging in protected activity. Such conduct is clearly unlawful and violative of Section 8(a)(1) and (2). *Metropolitan Alloys Corp*., supra; *United Artists Communications*, supra.

As discussed above, Respondent unlawfully recognized Local 917 in September 1991 when Local 917 did not represent an uncoerced majority of Respondent's employees. In addition, Respondent entered into Local 917's 1989–1992 collective-bargaining agreement, which contained a union-security clause, when Local 917 did not represent an uncoerced majority of Respondent's employees. Respondent began to enforce Local 917's 1989–1992 contract in September 1991, including the deduction of union dues from the employees' paychecks, pursuant to the contract's union-security clause, and began to make the other contractual contributions. In light of Respondent's unlawful recognition and assistance, as described above, Respondent violated Section 8(a)(1), (2), and (3) of the Act by entering into and enforcing the Local 917 1989–1992 contract, which had a union-security clause. *Jayar Metal Corp*., supra; *Famous Castings Corp*., 308 NLRB No. 16 (July 31, 1992) (not reported in Board volumes).

Respondent also violated the same sections of the Act when it entered into a successor agreement on September 11, 1992. Respondent has never established to date that Local 917 represents an uncoerced majority of Respondent's employees.

It is well settled that ''additional store clauses'' are valid in situations where the employees affected are not denied their right to have a say in the selection of their bargaining representative. *Alpha Beta Co*., 294 NLRB 228, 229 (1989). It is also well settled that these clauses can require recognition on proof of majority status by a union. *Alpha Beta Co*., supra. Thus, an employer who fails to recognize a union with majority status, pursuant to an ''additional store clause,'' violates Section 8(a)(1) and (5) of the Act. In the instant case, Respondent violated the Act by failing and refusing to recognize Local 272 pursuant to the ''additional store clause'' contained in the MGOA contract.

The record is clear that since 1956, Respondent has been a member of the MGOA. As a member of MGOA, Respondent has authorized the MGOA to bargain on its behalf with Local 272. The most recent MGOA/Local 272 contract had a duration period from February 6, 1989, until February 5, 1992, and contained an ''additional stores clause.'' Article V, section 5 of the contract which provides in pertinent part:

> In the event the Employer takes over the operation of a garage or parking establishment within the geographic area . . . that is not covered by a union contract, then the provisions of the contract shall immediately take full force and effect.

Based on this contract language, it is clear that Respondent has waived its right to an election and has agreed to recognize Local 272 whenever it opened up a new garage that was within the geographic area and that was not covered by a union contract. The evidence establishes that since August 20, 1991, when Respondent admittedly received Local 272's demand for recognition, it was required to recognize and apply the MGOA agreement to employees employed at the Promenade facility pursuant to its ''additional store clause,'' since Local 272 had a valid card majority in this unit at the time it demanded recognition.

In this connection Local 272 Representative Gordon and Philippe credibly testified that in late April and early May 1991, they witnessed a majority of Respondent's employees read and sign Local 272 authorization cards. Further, Gordon and Philippe credibly testified that prior to the signing of the cards, they explained to the employees that if they were interested in being represented by Local 272, then they should sign a Local 272 card. Based on the above evidence it is clear that since early May 1991, Local 272 had a valid card majority. *Koons Ford of Annapolis*, 282 NLRB 506, 514 (1986), citing *McEwen Mfg. Co*., 172 NLRB 990, 992 (1968), enfd. sub nom. *Amalgamated Clothing Workers v. NLRB*, 419 F.2d 1207, 1209–1210 (D.C. Cir. 1969), cert. denied 397 U.S. 988 (1970).[9]

After obtaining a valid card majority, Local 272, by at least a letter dated August 20, 1991, advised Respondent of its majority status. In this letter, Local 272 also demanded recognition pursuant to the ''additional stores clause'' contained in its MGOA contract. Respondent thereafter by letter dated September 10, 1991, refused to recognize Local 272. I conclude that the ''additional stores clause'' in the MGOA contract applied to Respondent's Promenade Garage, and that Respondent was required to recognize Local 272, since Local 272 clearly represented a majority of Respondent's employees. By such failure, Respondent violated Section 8(a)(1) and (5) of the Act.

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[9] A review of Respondent's payroll record for the months of April, May, and June 1991 reveal the following. The payroll list contained five names: Philome Philippe, Nestor Martinez, Mortimor Joseph, Jean H. Gratia (Herve), and Francois Philippe (an employee by the name of Bobby Williams only worked the first 2 weeks of April, and Gary clearly is not an employee as defined by the Act). A review of the Local 272 cards signed in late April and early May 1991 reveal the following. The Local 272 cards were signed and returned to Local 272 by four of the five employees listed on Respondent's payroll list. Philome Philippe, Nestor Martinez, Jean Gratia, and Francois Philippe read, signed, and returned Local 272 cards by early May 1991. Thus, a majority of Respondent's employees signed Local 272 authorization cards by early May 1991. Local 272 continued to represent a majority of Respondent's employees as of August 1991. In this regard Respondent's payroll list in August 1991 contains five (5) employees. The names of these employees are Philippe, Francois Philippe, Joseph Gratia, and Martinez. The evidence further shows that these five employees signed Local 272 cards in late August 1991.

In addition, Respondent failed to show that these cards were tainted or that the employees were coerced into signing the cards. Thus, Local 272 clearly represented a valid majority.

I also conclude that Respondent's failure to implement the above agreement as to its Promenade employees further violates Section 8(a)(1) and (5) of the Act.

Respondent contends that the Local 917 1989–1992 contract contains an ''additional stores clause'' which required it to recognize Local 917 as the representative of its Promenade employees. Article I of the Local 917 contract does state in pertinent part that:

> The Employer hereby recognizes the Union as the sole and exclusive bargaining agent for its full-time employees . . . at the following locations now or thereafter acquired by said Employer.

I find such contention without merit. Under the *Alpha Beta* analysis, Respondent, pursuant to an ''additional stores clause, is required to recognize a union once that union has established a valid card majority. As discussed above, there is no evidence that a majority of Respondent's employees were interested in Local 917. Rather, the valid Local 272 cards clearly show that Respondent's employees wanted Local 272 to represent them. Thus, Respondent's failure to show that Local 917 represented an uncoerced majority prohibits Respondent from recognizing Local 917 pursuant to an ''additional stores clause.''

If it were ultimately determined that the Local 272 after acquired store clause was not applicable, I would conclude that a bargaining order is warranted under *NLRB v. Gissel Parking Co*., 395 U.S. 575 (1969). It is clear from the record that in early May 1991, Local 272 enjoyed an uncoerced support of an overwhelming majority of Respondent's employees in an appropriate unit. Local 272, in May 1991, obtained four authorization cards from the five unit employees employed by Respondent in April and May 1991. In addition, it is also clear that as of late August 1991, Local 272 continued to enjoy uncoerced support from a majority of Respondent's employees. In late August 1991, all five employees employed by Respondent at that time signed Local 272 authorization cards.

When faced with a legitimate organizing campaign of Local 272, and a demand for recognition by Local 272 on August 20, 1991, Respondent immediately embarked on a sustained campaign of unfair labor practices, which included interrogating employees about their support for Local 272; threatening employees with discharge because they supported Local 272; threatening employees that it would be futile to support Local 272; suspending, transferring, and discharging the chief Local 272 organizer; and entering into a collective-bargaining agreement with Local 917 at a time when Local 917 did not enjoy uncoerced support from a majority of unit employees. Respondent also promised to pay their dues to Local 917.

I conclude such conduct by Respondent constitutes ''hallmark'' violations of the Act. The swiftness and timing of Respondent's misconduct, which began immediately after Local 272 made its demand for recognition, justify the issuance of a remedial bargaining order inasmuch as such conduct reduces the possibility of erasing the lingering effects of the unfair labor practices and of conducting a fair election by traditional means. *Yolo Transport*, 286 NLRB 1087, 1094 (1987); *Gissel Packing*, supra.

The Board has long held that the discharge of employees who begin the union movement and who obtain more than one signed authorization card, is the most serious violation of employees' Section 7 rights to engage in self-organization. *Food Cart Market*, 286 NLRB 1016, 1029 (1987). In fact, in *Food Cart Market*, supra, the Board held that such terminations are the ''most severe penalty that an employer can inflict for union activity.'' Id. Accordingly, such terminations constitute ''hallmark violations which will support the issuance of a bargaining order.'' Id. citing *Eastern Steel*, 253 NLRB 1230 (1981), enfd. 671 F.2d 104, 108 (3d Cir. 1982); *Churchill's Supermarkets*, 285 NLRB 138, 142–143 (1987). In addition, the Board has held that unlawful assistance to a minority labor organization which interferes with the self-organizational activity of employees, coupled with other hallmark violations, are of the type of unfair labor practices which tend to undermine majority strength for the legitimate union and make it unlikely and improbable that a fair election can be held. *Comet Corp*., 261 NLRB 1414, 1447 (1982).

Local 917 contends that since the instant case concerns two competing Teamsters locals claiming the right to represent the same bargaining unit, the representation issue should be decided by the Teamsters' Joint Council 16 which has already notified Local 272 and Local 917 that such issue is presently pending a joint board decision, rather than the National Labor Relations Board. I find Local 917's contention to be without merit. It is clear and well settled that representation issues involve the application of basic statutory policy, and are matters for decision exclusively by the Board. *San Diego Building Trades Council v. Garman*, 359 U.S. 236 (1959); *Port Chester Nursing Home*, 269 NLRB 150, 155, 156 (1984), see also cases cited therein; *Spielberg Mfg. Co*., 112 NLRB 1080 (1959).

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices within the meaning of the Act, I shall recommend it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

Since I have found that Respondent discriminatorily suspended and discharged its employee Philome Philippe, I shall recommend that Respondent make Philippe whole for any loss of earnings he may have suffered by reason of the discrimination against him from the date of his discharge until the date of his offer of reinstatement. Respondent unconditionally offered to reinstate Philippe on May 12, 1993. Philippe waived reinstatement. Therefore, the backpay period shall be from his discharge by Respondent on May 8, 1991, until Respondent's valid offer of reinstatement on May 12, 1993. There is also backpay due to Philippe for the 3-day suspension, described above.

Backpay for the above employee shall be computed in accordance with the formula approved in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

I shall also recommend that Respondent expunge from its records any reference to such unlawful termination and to provide written notice of such expunction to Philippe, and to inform him that Respondent's unlawful conduct will not be used as a basis for further personnel actions concerning him. *Sterling Sugars*, 261 NLRB 472 (1982).

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 272 and Local 917 are labor organizations within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by:

(a) Interrogating employees about their union support.

(b) Threatening employees with discharge because they support a union.

(c) Threatening employees it would be futile for them to support a union.

(d) Soliciting and coercing employees to sign dues-checkoff authorizations for Local 917 or any other union.

(e) Soliciting employees to sign petitions which revoke their membership in Local 272 or any other union.

4. Respondent violated Section 8(a)(1) and (3) of the Act by suspending, transferring, and discharging its employee Philome Philippe because of his activities on behalf of Local 272.

5. Respondent violated Section 8(a)(1) and (2) of the Act by recognizing and bargaining with Local 917 as the exclusive bargaining representative of its Promenade facility at a time when Local 917 did not represent an uncoerced majority of Respondent's employees.

6. Respondent violated Section 8(a)(1), (2), and (3) of the Act by enforcing and maintaining a collective-bargaining agreement with Local 917 containing a union-security clause and a dues-checkoff provision, at a time when Local 917 did not represent an uncoerced majority of Respondent's employees.

7. Respondent violated Section 8(a)(1) and (5) of the Act by refusing to recognize and bargain with Local 272 as the exclusive bargaining representative of its employees employed at the Promenade Garage in the unit found appropriate as set forth below:

> All full-time and regular part-time working managers, washers, floormen, transporters, attendants, cashiers, employed by Respondent at its facility located at 530 East 75th St., New York, New York, excluding office clericals, professional employees, guards and supervisors as defined by the Act.

8. The aforesaid unfair labor practices affect commerce within the meaning of the Act.

[Recommended Order omitted from publication.]